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January 6, 2011

The January 20 hearing will remain as the scheduled date for the preliminary injunction hearing. GO SMILE respectfully submits,
1/10/11
SD

VIA FACSIMILE

Honorable P. Kevin Castel
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10021

**Re: GO SMILE, Inc. v. Dr. Jonathan B. Levine, D.M.D., P.C.
and Dr. Jonathan B. Levine, 10 CIV 8663 (PKC)**

Dear Judge Castel:

This firm, along with co-counsel at Barack Ferrazzano Kirschbaum & Nagelberg LLP, represents plaintiff GO SMILE in the above-referenced action. We write in connection with the call we received from Chambers late yesterday afternoon, inquiring as to whether the parties wished to move the preliminary injunction hearing from January 20 (the date on which it is currently scheduled) to January 11, 12, or 13.

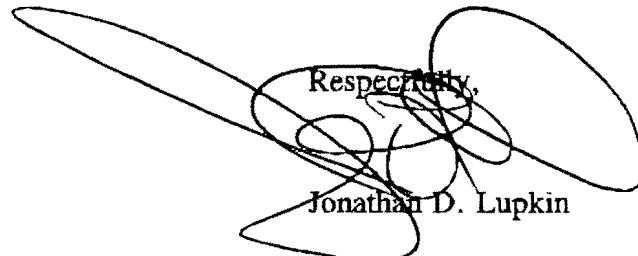
We have conferred with counsel for defendants, and while defendants would like to advance the hearing date to January 13, GO SMILE respectfully declines to do so. Our position is premised upon two undisputed realities. First, despite having been served with GO SMILE's document request on December 20, 2010, the existence of a December 28 deadline for defendants' production and GO SMILE's willingness, in light of the difficulties inherent in the collection and review of ESI production, to work cooperatively with counsel by not pressing the December 28 deadline and agreeing to a rolling production, defendants have yet to produce a single document other than packaging exemplars. Consequently, and without casting aspersions, defendants' non-production renders a hearing next Thursday unfeasible.

Second, despite their articulated willingness to proceed next week in the interests of finishing sooner, defendants have made clear that their product launch, which had been scheduled for shortly after the January 20 hearing, will not occur until, at the earliest, sometime in February. See Declaration of Jonathan B. Levine, dated January 4, 2011, ¶ 20 (Document No. 35 on the Court's Docket). In light of the movement of the launch date and defendants' virtual inability to begin document production, we respectfully submit that advancing the hearing date is unnecessary and, moreover, would be severely prejudicial to GO SMILE.

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If the Court wishes to discuss this matter, we remain at its disposal.



A handwritten signature in black ink, appearing to read "Respectfully," followed by "Jonathan D. Lupkin". The signature is somewhat stylized and includes several loops and crosses.

cc: Counsel of Record (via e-mail)